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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 209

EMICH MOTORS CORPORATION AND U. S. ACCEPTANCE CORPORATION,

Petitioners,

vs.

GENERAL MOTORS CORPORATION AND GENERAL MOTORS ACCEPTANCE CORPORATION,

Respondents.

MOTION OF PETITIONERS FOR LEAVE TO FILE THE ANNEXED SUPPLEMENT TO PETITION FOR REHEARING OR MODIFICATION OF ORDER GRANTING PETITION FOR WRIT OF CERTIORARI.

THOMAS DODD HEALY,
HAROLD STICKLER,
A. BRADLEY EBEN,
208 S. La Salle Street,
Chicago 4, Illinois,
Counsel for Petitioners.

Dated: October 26, 1950.

THE GUNTHORP-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

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EMICH MOTORS CORPORATION AND U. S. ACCEPTANCE CORPORATION,

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GENERAL MOTORS CORPORATION AND GENERAL MOTORS ACCEPTANCE CORPORATION,

Respondents.

MOTION OF PETITIONERS FOR LEAVE TO FILE THE ANNEXED SUPPLEMENT TO PETITION FOR REHEARING OR MODIFICATION OF ORDER GRANTING PETITION FOR WRIT OF CERTIORARI.

Emich Motors Corporation and U. S. Acceptance Corporation, petitioners, respectfully move for leave to file the annexed supplement to their petition for rehearing or modification of the order of this Court of October 9, 1950, granting the petition for certiorari but limiting the scope of review.

The annexed supplement sets forth an additional ground newly arisen for granting the petition for rehearing or modification based upon the intervening circumstance that

this Court granted the petition for certiorari in the case of *"Kiefer-Stewart Company* v. *Joseph E. Seagram & Sons, Inc., et al."*, October Term, 1950, No. 297.

THOMAS DODD HEALY,
HAROLD STICKLER,
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GENERAL MOTORS CORPORATION AND GENERAL MOTORS ACCEPTANCE CORPORATION,

Respondents.

SUPPLEMENT TO PETITION FOR REHEARING OR MODIFICATION OF ORDER GRANTING PETITION FOR CERTIORARI.

As an additional ground newly arisen for removing the limitations upon the scope of the review granted by this Court's order of October 9, 1950, petitioners call attention to this Court's order of October 23, 1950, granting the petition for certiorari in the case of *Kiefer-Stewart Company* v. *Joseph E. Seagram & Sons, Inc., et al.*, October Term, 1950, No. 297, reported at 182 F. (2d) 228. The order in that case was entered on the same day that petitioners in this case filed their motion for leave to file their petition, annexed to said motion, for rehearing or modification of said order of October 9, 1950.

The *Kiefer-Stewart Company* case is but the latest in-

stance in which the Court of Appeals for the Seventh Circuit has taken a restrictive view of the antitrust laws (Petn. for Cert., p. 10). It was the second decision by the Court below in two months—the instant case being the first—in which the jury verdict and judgment favoring a private suitor was overturned on the questionable premises that there is nothing improper in a conspiracy to fix the maximum resale prices of independent dealers and that the rules of evidence require an interpretation and application making the private suitor's recovery in antitrust cases virtually impossible.

The question of maximum resale price-fixing which this Court has undertaken to review in the *Kiefer-Stewart Company* case is substantially the same as that presented in the instant case (Petn. for Cert., pp. 26-29). Petitioners here demonstrated from the record that respondents' defense amounted to a claim that they were justified in cancelling Emich Motors' dealerships because of its refusal to abide by the installment resale prices fixed by respondents (Petn. for Cert., pp. 26-29; Reply Bf. of Petitioners, pp. 3-5). Respondents took the position that their defense was merely that they were attempting to prevent overcharges (R. 9461), meaning charges over and above those of the 6% plan originated by respondents (R. 9462-9463). In upholding respondents' defense, the Court of Appeals stated "that the question of finance overcharges became one of the most sharply contested issues of the trial" (R. 9461) and that "the exclusion of the evidence relating to finance (so-called overcharges) * * * wrongly prevented a fair presentation of a *legitimate defense* * * *" (R. 9464-9465). (Matter in parentheses and italics supplied.) Since, by definition, the term "overcharge" means a charge over and above a maximum price used as a standard, it is manifest that by accepting respondents' contention as to their defense and holding it to be legitimate, the Court below was applying

the same principle in the instant case as in the *Kiefer-Stewart Company* case, that is, that a conspiracy to fix maximum resale prices is not in violation of the prohibition of the antitrust laws against price-fixing.

In view of the fact that both the *Kiefer-Stewart Company* case and the instant case are pending before this Court, and this Court has undertaken to review this question in the *Kiefer-Stewart Company* case, it is in accord with this Court's practice to review this question in the instant case as well. *Jones* v. *Opelika*, 316 U. S. 584, at p. 589.

WHEREFORE, for the additional reason set forth above, petitioners pray that the limitations expressed in said order of October 9, 1950, be removed.

Respectfully submitted,

THOMAS DODD HEALY,
HAROLD STICKLER,
A. BRADLEY EBEN,
Counsel for Petitioners.

CERTIFICATE OF COUNSEL.

We hereby certify that the foregoing Supplement to the petition for rehearing or modification is presented in good faith and not for delay and is restricted to grounds specified in Rule 33 of the rules of this Court.

THOMAS DODD HEALY,
HAROLD STICKLER,
A. BRADLEY EBEN,
Counsel for Petitioners.